

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Deutsche Bank National Trust Co., as Trustee
for Holders of the GSAA Home Equity Trust
2006-11 Asset-backed Certificates Series
2006-11,

Case No.: 2:17-cv-02536-JAD-BNW

Order re: *Thunder Properties* remand

Plaintiff
v.
Star Hill Homeowners Association; et al.,
Defendants

[ECF No. 69]

Deutsche Bank National Trust Company brought this action to challenge the 2013
judicial foreclosure sale of the home at 5055 Quiet Falls Court in Las Vegas, Nevada, on
it claims a deed of trust securing a mortgage. Foreclosure-sale purchaser SFR
ments Pool 1, LLC, moved to dismiss Deutsche Bank’s quiet-title claims as time barred.¹ I
that those claims are subject to a four-year statute of limitations that began to run at the
closure sale and granted SFR’s motion to dismiss.² But the Nevada Supreme Court later
in *U.S. Bank v. Thunder Properties, Inc.* that the four-year limitations period doesn’t “begin
until the lienholder receives notice of some affirmative action by the titleholder to
cate the lien or that is otherwise inconsistent with the lien’s continued existence.”³ so the

1 ECF Nos. 18, 26.

22 ² ECF No. 36. The bank also pled wrongful-foreclosure and statutory-violation claims against
23 the Star Hill Homeowners Association. I found that those claims were subject to different
statutes of limitation and granted the HOA's motion for judgment on them. *Id.* at 8. Those
claims are not impacted by *Thunder Properties*, and I do not revive them by this order.

³ *U.S. Bank v. Thunder Properties, Inc.*, 503 P.3d 299, 306 (Nev. 2022).

1 Ninth Circuit remanded this case back to me to determine the impact of *Thunder Properties* on
 2 that dismissal.⁴

3 In its Motion for Ruling on Remand, the bank argues that its suit is timely under *Thunder*
 4 *Properties* because “[t]he record is devoid of *any* action SFR took to ‘affirmatively repudiate’
 5 the deed of trust” before the bank filed this suit.⁵ The bank asks me not merely to unwind the
 6 dismissal, but also to adjudicate the quiet-title claims in its favor.⁶ SFR opposes the motion,
 7 arguing that, due to its pervasiveness as a litigant in this area of HOA-foreclosure law, the bank
 8 “was on notice of SFR’s position of refuting all deeds of trust” from the day that the foreclosure-
 9 sale deed recorded, rendering its filing of these claims nearly five years later untimely.⁷

10 Having now reconsidered my dismissal in light of *Thunder Properties*, and because the
 11 bank’s complaint does not allege that SFR repudiated the deed of trust or took an action
 12 inconsistent with its existence in the four years before the bank filed this suit, I set aside the
 13 dismissal and vacate the judgment. But the bank’s request for judgment in its favor is premature
 14 and inadequately developed in its five-page motion. So I merely allow this case to proceed to the
 15 litigation track, and I order the parties to file a new joint proposed discovery plan and scheduling
 16 order by March 31, 2023.

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 22⁴ ECF No. 53 (remand order).

23⁵ ECF No. 69 at 4.

⁶ *Id.* at 5.

⁷ ECF No. 73 at 2.

Discussion

2 Rule 60(b)(6) of the Federal Rules of Civil Procedure allows a court to “relieve a party ..

3 . from a final judgment, order, or proceeding” based on any “reason that justifies relief.”⁸ The

4 *Thunder Properties* ruling supplies such a reason. When I dismissed the bank’s claims in 2018,

5 the Nevada Supreme Court had not yet determined which statute of limitation—if any—applies

6 to these HOA-foreclosure quiet-title claims. Although I correctly predicted that the Court would

7 choose the four-year limitations period in Nevada Revised Statute (NRS) 11.220, I was wrong

8 about when that period begins to run.⁹ Whereas I found the foreclosure to be the trigger,

9 *Thunder Properties* holds that “an HOA foreclosure sale—standing alone—does not sufficiently

10 call the bank’s deed of trust into question to trigger the statute of limitations.”¹⁰ “To rise to the

11 level that would trigger the limitations period, something more is required”—“something

12 closely analogous to ‘notice of disturbed possession,’ such as repudiation of the lien.”¹¹

13 I dismissed the bank’s quiet-title claims on SFR’s motion to dismiss.¹² A court can grant
14 a motion to dismiss based on a claim’s untimeliness only “if the running of the statute is apparent
15 on the face of the complaint.”¹³ So, under *Thunder Properties*, for the bank’s quiet-title claims
16 to stay dismissed based on the original motion to dismiss, it must be apparent on the face of the
17 complaint that SFR took affirmative action to repudiate the deed of trust or otherwise acted
18 inconsistent with it more than four years before this suit was filed.

20 | ⁸ Fed. R. Civ. P. 60(b).

²¹ ⁹ See ECF No. 36 at 7.

¹⁰ *Thunder Properties*, 503 P.3d at 307.

²² ¹¹ *Id.* at 306–07.

²³||¹² See ECF No. 18 (SFR's motion to dismiss); ECF No. 36 (dismissal order).

¹³ *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

1 The complaint contains just two references that could possibly fall into these categories.
 2 The bank first alleges that it unsuccessfully mediated this dispute with the Star Hill HOA on
 3 November 15, 2016, and that SFR was notified of that “mediation but refused to participate.”¹⁴
 4 The complaint was filed a little more than ten months after that mediation, so even if SFR’s
 5 refusal to participate in the mediation could liberally be construed as an act inconsistent with the
 6 bank’s lien interest, the complaint was filed well within the four years after that. The second
 7 potential trigger is the bank’s allegation that “on information and belief, [SFR] asserts [that] it
 8 owns the property free and clear of the senior deed of trust.”¹⁵ But the complaint is silent about
 9 when SFR made that assertion or the bank learned of it. So I cannot conclude that the face of the
 10 complaint reveals the untimeliness of the bank’s claims such that I can dismiss them at the
 11 motion-to-dismiss stage.

12 **Conclusion**

13 IT IS THEREFORE ORDERED that Deutsche Bank’s motion for ruling on remand
 14 [ECF No. 69] is GRANTED in part: having reconsidered the dismissal order, I set it [ECF
 15 No. 36] aside, vacate the resulting judgment [ECF No. 37], and return this case to the
 16 normal litigation track. In all other respects, the motion is denied.

17 The parties must file their proposed joint discovery plan and scheduling order by March
 18 31, 2023.

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 20 
 21 U.S. District Judge Jennifer A. Dorsey
 22
 23 March 1, 2023

23¹⁴ ECF No. 1 at ¶ 8.

¹⁵ *Id.* at ¶ 36.